



OPASTCO

21 Dupont Circle NW
Suite 700
Washington, DC 20036

December 10, 2007

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Ex Parte Notice

**Re: Petition for Clarification or, in the Alternative, Waiver of Section 76.1204(a),
(b) of the Commission's Rules; Implementation of Section 304 of the
Telecommunications Act of 1996; Commercial Availability of Navigation
Devices
CS Docket No. 97-80**

**Implementation of Section 304 of the Telecommunications Act of 1996the
Cable Television Consumer Protection and Competition Act of 1992;
Commercial Availability of Navigation Devices; Compatibility Between
Cable Systems and Consumer Electronics Equipment
CS Docket No. 97-80
PP Docket No. 00-67**

**Implementation of the Cable Television Consumer Protection and
Competition Act of 1992; Development of Competition and Diversity
in Video Programming Distribution: Section 628(c)(5) of the
Communications Act: Sunset of Exclusive Contract Prohibition; Review of
the Commission's Program Access Rules and Examination of Programming
Tying Arrangements
MB Docket No. 07-29
MB Docket No. 07-198**

Dear Ms. Dortch:

On December 10, 2007, Roger Nishi of Waitsfield Champlain Valley Telecom in
Waitsfield, VT, and Stephen Pastorkovich of the Organization for the Promotion and
Advancement of Small Telecommunications Companies (OPASTCO) met with David

Konczal, Mary Beth Murphy, Steven Broeckaert, Tracy Waldon, and Kathleen Costello of the Media Bureau. The meeting was held to discuss OPASTCO's view that measures that ease the entry of telecommunications carriers into the video market also serve to enhance broadband deployment and penetration. The discussion focused on three main issues: 1) the need to clarify Section 76.1204 of the Commission's rules regarding the separation of security and navigation functions in set-top boxes as they apply to Internet Protocol Television (IPTV) devices; 2) how proposed rules regarding bidirectional compatibility of cable television systems and consumer electronics equipment are not applicable to IPTV systems; and 3) the need to close the terrestrial loophole and preclude mandatory tying of programming. OPASTCO stressed that these matters are important not only to provide greater consumer choice and competitiveness in the video market, but also to enhance investment in broadband infrastructure. The attached presentation was used during the meeting and contains details of the discussion.

In accordance with FCC rules, this letter and the presentation are being filed electronically in the above-captioned dockets.

Sincerely,

/s/ Stephen Pastorkovich

Stephen Pastorkovich
Business Development Director/
Senior Policy Analyst
OPASTCO

cc: David Konczal
Mary Beth Murphy
Steven Broeckaert
Tracy Waldon
Katie Costello



O P A S T C O

Organization for the Promotion and Advancement of Small Telecommunications Companies

Rural Broadband MVPD Issues

**Presentation to Media Bureau Staff
December 10, 2007**

About OPASTCO

- OPASTCO is a national trade association of over 520 small, rural local exchange carriers (LECs), including both commercial companies and co-operatives. OPASTCO members are “rural telephone companies” as defined in 47 U.S.C. §153(37).
- One half of OPASTCO members are also traditional cable companies; 75 percent offer video via cable, DSL, fiber, or some combination.
- Virtually all offer high speed data services, reaching more than 90 percent of customers on average. Forty percent offer it to 100 percent of customers. Half offer discounts when video and broadband services are bundled together. Penetration rates average 31 percent overall.
- Almost 90 percent offer speeds of 1 Mbps or greater.

How the Commission Can Enhance Broadband

Broadband penetration is enhanced when it is bundled with video services. Therefore, the Commission can spur additional broadband deployment and penetration by taking the following short-term steps:

- 1. Grant The OPASTCO-NTCA Petition On Set-Top Boxes.**
- 2. Rural LEC MVPDs Should Not Be Subject to Cable-Centric “2-Way Plug and Play” Rules.**
- 3. The Commission Should Close the Terrestrial Loophole and Preclude Mandatory Tying of Programming.**

Rural LEC Entry Into the MVPD Market Spurs Broadband

Deployment & Investment:

The “ability to offer video service and to deploy broadband networks are linked intrinsically...”

- *FCC Local Franchising Report and Order*, ¶ 62

Penetration:

"Entertainment applications will be the key. If anything will pull in the [broadband] holdouts, it's going to be **applications that make the Internet more akin to pay TV.**" – *Parks Associates Press Release* (Mar. 22, 2007)

Grant The OPASTCO-NTCA Petition On Set-Top Boxes

Section 76.1204 of the Commission's rules, which require separation of the security and navigation functions of set-top boxes, was written before the emergence of viable IPTV solutions. The rules incorporate cable industry standards. However, similar standards have not yet been developed for IPTV technologies. This ambiguity has required cutting-edge companies to pay large filing fees for waivers that should not be necessary.

OPASTCO and the National Telecommunications Cooperative Association (NTCA) jointly filed a petition that requests clarification of what constitutes compliance for IPTV equipment, pending the development of standards. In the alternative, it requests waivers for providers of IPTV services pending clarification. In addition, older NextLevel products should be granted permanent waivers, as requested in a separate petition. Continued uncertainty chills entry by and innovation by hardware manufacturers.

Rural LEC MVPDs Should Not Be Subject to Cable-Centric “2-Way Plug and Play” Rules

The Commission appropriately asked whether rules designed to ensure bi-directional compatibility between cable television systems and consumer electronic equipment should apply to MVPDs that deliver video over broadband connections. The record clearly shows that cable-centric rules are not applicable to IP technology.

Both the Consumer Electronics Association and the National Cable and Telecommunications Association have offered competing proposals. Neither reflects the technologies and architectures used by broadband MVPDs.

Standards bodies are in the process of developing specifications appropriate for IP technology. Rules should not apply until such standards are in place.

The Commission Should Close the Terrestrial Loophole and Preclude Mandatory Tying of Programming

Currently, program access rules are not applied to terrestrially delivered programming. Vertically integrated programmers have the ability and incentive to discriminate against non-affiliated MVPDs, and use this “terrestrial loophole” to their advantage. Program access rules should be applied to terrestrially delivered programming, whether affiliated with cable or not. Lack of access to this programming impedes competition in the video market while deterring investment in broadband infrastructure.

Mandatory tying arrangements, where MVPDs are forced to carry certain programming in exchange for access to must-have programming, are rampant in the industry. Mandatory tying impedes both consumer choice in video, as well as broadband deployment. Therefore, the Commission should preclude this practice.

Conclusion

Regulatory uncertainty and restricted access to content impede the twin goals of increased consumer choice in the video market and more widespread broadband deployment.

Therefore, the Commission should:

1. Grant the OPASTCO-NTCA petition on set-top box rules;
2. Refrain from applying cable-centric “2-way plug and play” rules to MVPDs that use broadband to provide video to consumers; and
3. Close the terrestrial loophole and preclude the mandatory tying of programming.